(1)

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION 2126 **OF 2003**

Cement and Khadan Kamgar Sangh,
Through its General Secretary,
Shri Santram Devangan,
S/o Late Shri D.P. Devangan,
Aged about 51 years,
Head Office-Mandhar Cement Factory,
P.O. Mandhar, Distt. Raipur,
Chhattisgarh.

Single Bench

PETITIONER

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Heavy Industries and Public Sector Undertakings,
Udyog Bhawan,
NEW DELHI.

2. Cement Corporation of India,
Through its Chairman cum Managing Director,
Core 5, CGO Complex, 7,Lodhi Road,
NEW DELHI.

3. The General Manager,
Mandhar Cement Factory,
Cement Corporation of India, Mandhar,
DISTT. Raipur (CG).

P. R. No. 1818/03
Presented by Shri Manoj Dubey
dated 03.09.03

4. The Board of Industrial Finance and Reconstruction,
Through its Chairman,
22nd Floor, Jawahar Vyapar Bhawan,
Tolstoy Marg,
NEW DELHI.

...**RESPONDENT**

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE ORDERS/DIRECTIONS/WRIT

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2126 of 2003

Petitioner — Cement and Khadan Kamgar Sangh

Versus

Respondents — Union of India and others

Post for order on 31st July, 2006.

Sd/-
Satish K. Agnihotri
Judge

PL
31/7/06

(231)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2126 of 2003

Petitioner — Cement and Khadan Kamgar Sangh

Versus

Respondents — Union of India and others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri Pankaj Shrivastava, Advocate for the petitioner.
Shri S. K. Beriwal, Standing counsel for the respondent No.1.
Shri N. K. Vyas, Advocate for the respondents No. 2 and 3.
None for the respondent No.4.

O R D E R

(31st July, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present writ petition is filed in representative capacity by the petitioner-Sangh, representing the interest of employees, who had opted for voluntary retirement scheme (VRS), seeking a relief that the respondents be directed to grant 50% additional exgratia payment as per the circular dated 2.9.2002 (Annexure P/1) wherein it is clearly provided that 50% additional exgratia shall be allowed to the Wage Board employees as to the employees in I.D.A. scale of pay. 50% additional exgratia shall, however, be payable, provided they give an undertaking in their V.R. application that they will not be eligible for any relief of Cement Wage Settlement dated 14.8.2000. On receipt of this 50% additional ex-gratia and payments of VRS being made shall be full and final settlement. Other terms and conditions of one time offer, including last date for submission of applications up to 3.9.2002 remains unaltered.

2. The undisputed facts in nutshell are that the petitioner is an Association, registered under the Registration of Societies Act. The

(232)

members of the petitioner are employees of the respondent/Corporation having the Factories at Akaltara, Mandhar, Kurkutta, Nayagaon, Charkha Dadri etc. The Govt. of India/respondent No. 1 took a policy decision to rationalize surplus manpower in the public sector unit and issued "CCI Voluntary retirement Scheme 2001" (VRS) by circular dated 7.3.2001 (Annexure P-6). The said scheme provided for payment of ex-gratia. As per para 5.0 of the scheme the payment of ex-gratia will be made to the willing employees opting for voluntary retirement under either scheme A or scheme B, which reads as under:-

"5.0 Ex-GRATIA PAYABLE UNDER THE SCHEME:-

SCHEME-A

(I) The employees requesting for Voluntary Retirement, subject to acceptance of the request by the competent authority shall be entitled to receive ex-gratia Payment equivalent to 45 days emoluments for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before the normal date of retirement, whichever is less.

(II) All those employees who have completed not less than 30 years of service will be eligible for a maximum of 60 months salary/wages as compensation. This will be subject to the amount not exceeding the salary/wages for the balance period of service left (at the rate of monthly salary/wages at the time of Voluntary Retirement).

SCHEME-B

The eligible employees requesting for Voluntary Retirement Subject to acceptance of the request by the competent authority shall be entitled to receive ex-gratia payment which will consist of salary of 35 days for each completed year of service and at the rate of 25 days for each year of balance period of service until superannuation. The compensation will be subject to a minimum of Rs. 25,000/- or 250 days salary, whichever is higher. However, this ex-gratia payment shall not exceed the sum of salary that the employee would

draw at the prevailing level for the balance period of service left before superannuation.

NOTE:

(a) Salary/Emoluments for the purpose of computation of ex-gratia shall consist of Basic Pay + DA only.

(b) The calculation of Ex-gratia would be based of every completed year of service of part thereof. The ex-gratia for part of the year shall be computed of pre-rate basis based on number of months completed.

(c) In the event of pay revision being sanctioned subsequent to Separation on VR retrospectively, ex-gratia will be recalculated on the basis of revised pay, and difference paid.

The aforesaid ex-gratia amount shall be in addition to their terminal benefits, which would be as under:-

(i) The balance in PF account payable as per the ECEF Rules and Regulations.

(ii) Cash equivalent of accumulated leave as per the rules of the Corporation.

(iii) Encasement of Causal Leave on pro-rata basis up to the date of release of employee in respect of only those who opt for Scheme 'B'.

(iv) Gratuity as per the Payment of Gratuity Act.

(v) Notice pay for the shortfall in notice period of the month/three months, as applicable, if any.

(vi) The employees granted VR shall be entitled for TA for self and family and for transfer of household effects as applicable in case of normal retirement age.

Superannuation, for proceeding to home town or to the place where the employee intends to settle down."

3. The members of the petitioner-Sangh are Wage Board employees and are governed by various Wage Board Settlements dated 31.1.2002, 2.9.2002 and 14.8.2000. The members of petitioner-Sangh opted for VRS up to 2.9.2002. In the meantime, the circular dt. 2.9.2002 (AnnexureP/1) came to be circulated for the benefit of employees of the respondent-Corporation which provided for grant

of 50% additional ex-gratia to Wage Board employees subject to an undertaking that said employees will not be entitled for any relief of implementation of Cement Wage Settlement dated 14.8.2000. The said circular is quoted here in below:-

> "Ref. No. 1 DR. 7(5) 2002 Dt. 02.9.02
>
> Vide circular No. PD/PP/1 (45)/2002/6320 Dt. 10.06.02 one time offer of voluntary retirement for the employees posted at Non operating Units C.O. was issued, last date for submission of applications was extended from time to time up to 03.09.02.
>
> In view of the decision awaited from the Ministry of Heavy Industries & Public Enterprises regarding eligibility of ADL 50% Ex-gratia as per D.P.E. guidelines to wage Board scale employees of CCL the Dept. of Heavy Industry vide their letter No. 10(1)2001-PE-XII(Pt) Dt. 2.9.2002 has communicated that 50% Addl. Ex-gratia shall be allowed to Wage Board employees as to the employees in IDA scale of pay. The 50% Addl. Ex-gratia shall however be payable provided they give an undertaking in their V.R. application that they will not be eligible for any relief on implementation of Cement Wage Settlement Dt. 14.8.2000 on receipt of this 50% Addl. Ex-gratia and payments of VRS being made shall be full and final settlement other terms & conditions of one time offer incl. last date for submissions of applications up to 03.9.02 remaining unaltered.
>
> Sd/-
> (M.P. Sinha)
> GM (P & A)"

4. Learned counsel appearing the petitioner submitted that the Wage Board Settlement dated 14.8.2000 was implemented recently by letter dated 15.6.2006 (Annexure R-2/3). The members of the petitioner-Union are Wage Board employees and could not get the relief under Wage Board Settlement dated 14.8.2000 till date. Learned counsel further submitted that the employees who had opted for VRS under the scheme 2001 are ready and willing to

forgo the benefits available to them as per the wage board settlement dated 14.8.2000 in view of the circular dated 2.9.2002. Accordingly, the employees are entitled to benefit of 50% additional Ex-gratia as per the circular dated 2.9.2002.

5. On the contrary, Shri N.K. Vyas, learned counsel appearing for the respondents No. 2 & 3 and Shri S.K. Beriwal, learned standing counsel appearing for respondent No. 1, submitted that those employees who have been released by the PSU before the date of 6.11.2001 would not be entitled to the benefit of circular dated 2.9.2002. In the present case, the members of the petitioner-Sangh have been released before 6.11.2001.

6. Having heard learned counsel for the parties and having pursued the records, it is evident that the circular dated 6.11.2001 (Annexure R-2/3), relied on by the respondents that the said O.M. was applicable only to those employees who were granted pay scales at 1.1.1987 and 1.1.1992, called as IDA (Industrial Dearness Pattern) employees. The dispute involved in the present case does not deal with the IDA schemes of 1.11.1987 and 1.1.1992 but the wage board employees who are governed by the Wage Board Settlements. This circular dated 2.9.2002, on plain reading, makes it clear that the employees who were to receive benefit under the wage board settlement dated 14.8.2000 would be entitled to 50% additional ex-gratia, subject to undertaking that the said employees would not be eligible for any relief on implementation of the Cement Wage Settlement dated 14.8.2000. The Wage Board Settlement dated 14.8.2000 has been implemented only vide order dated 15.6.2006, not before. The members of the petitioner-Sangh, before this Court are agreeable to give undertaking that the members/employees would not be eligible for any relief on implementation of the

Cement Wage Settlement and all the terms and conditions provided in circular dated 2.9.2002.

7. The respondents have raised the question of cut off date that the O.M. dated 6.11.2001 provides for no benefit to those employees, who have opted for VRS before 6.11.2001. In the present case that O.M. has been held not to be applicable in the facts of the present case. As such, it is not necessary to go in to the question of fixing of cut off date for granting of benefits.

8. The cases cited by learned counsel for the respondents are not relevant to the facts of the present case, as it is not the case, where the VRS scheme 2001 is under question and the petitioner-Sangh is asking for something more which is not provided in the circular. The counsel for the respondents are also not contending that the benefits granted under the circular dated 2.9.2002 is not binding on the Corporation. Thus 50% additional ex-gratia, as provided under 2.9.2002 is payable to all the Wage Board Settlement employees, who have opted for VRS before 3.9.2002.

9. For the reasons stated above, the petition is allowed and the respondents are accordingly directed to grant 50% additional ex-gratia to the members of the petitioner-Sangh, who are governed by the Wage Board Settlement dated 14.8.2000 and have made application for V.R.S. before 3.9.2002 in terms of the circular dated 2.9.2002. No order as to castes.

Sd/-
Satish K. Agnihotri
Judge

Thakur